

Rule 115. Court of Appeals Review of Decisions of the Department of Employment and Economic Development and Other Decisions Reviewable by Certiorari and Review of Decisions Appealable Pursuant to the Administrative Procedure Act**115.01 How Obtained; Time for Securing Writ**

Review by the Court of Appeals of decisions of the Department of Employment and Economic Development and other decisions reviewable by certiorari and review of decisions appealable pursuant to the Administrative Procedure Act may be had by securing issuance of a writ of certiorari. The appeal period and the acts required to invoke appellate jurisdiction are governed by the applicable statute.

(Amended effective for appeals taken on or after January 1, 1992; amended effective January 1, 1999; amended effective January 1, 2010.)

Advisory Committee Comment - 2009 Amendments

Rule 115.01 is amended to change the reference, in both the title and body of the rule, to the Department of Employment and Economic Development, the current name of this agency. See Minnesota Statutes 2008, section 15.01.

115.02 Petition for Writ; How Secured

The petition and a proposed writ of certiorari shall be presented to the clerk of the appellate courts. The writ issued shall be in the name of the court.

115.03 Contents of the Petition and Writ; Filing and Service

Subdivision 1. Contents and Form of Petition, Writ and Response. The petition shall definitely and briefly state the decision, judgment, order or proceeding that is sought to be reviewed and the errors that the petitioner claims. A copy of the decision and the statement of the case pursuant to Rule 133.03 shall be included in an addendum prepared as prescribed by Rule 130.02. The title and form of the petition and writ shall be as shown in the appendix to these rules. The respondent's statement of the case, if any, shall be filed and served not later than 14 days after service of the petitioner's statement.

Subd. 2. Bond or Security. (a) No cost bond need be filed unless required upon motion for good cause pursuant to Rule 107.

(b) The agency or body may stay enforcement of the decision in accordance with Rule 108. Application for a supersedeas bond or a stay on other terms must be made in the first instance to the agency or body. Upon motion, the Court of Appeals may review the agency's or body's decision on a stay and the terms of any stay.

Subd. 3. Filing; Fees. The clerk of the appellate courts shall file the original petition and issue the original writ. The petitioner shall pay \$550 to the clerk of the appellate courts, unless no fee is required under Rule 103.01, subd. 3, or by statute.

Subd. 4. Service. The petitioner shall serve a copy of the petition and the writ, if issued, upon the agency or body to which it is directed and upon every party. Proof of service shall be filed with the clerk of the appellate courts within 5 days of service. A copy of the petition and writ shall be provided to the Attorney General, unless the state is neither a party nor the body to which the writ is directed.

(Amended effective July 1, 1989; amended effective for appeals taken on or after January 1, 1992; amended effective July 1, 1993; amended effective January 1, 1999; amended effective July 1,

2003; amended effective July 1, 2009; amended effective January 1, 2010; amended effective July 1, 2014.)

Advisory Committee Comment - 2009 Amendments

Rule 115.03, subdivision 1, is amended to change the timing for filing a statement of the case by a respondent to 14, rather than ten, days after service of the petitioner's statement of the case. This change makes the respondent's statement of the case due on the same day a notice of related appeal would be due. See Rule 104.01, subdivision 4, as amended.

Advisory Committee Comment - 2014 Amendments

Rule 115.03 retains provision for the possibility of a cost bond being required, but in most cases no cost bond will be required because of the amendment to Rule 107 to require a bond only if one is ordered by the trial court. In an exceptional case, the appellate court could view the denial of a motion to require a bond to be an abuse of the trial court's broad discretion and would require a bond.

115.04 The Record on Review by Certiorari; Transmission of the Record; Timing of Briefing

Subdivision 1. General Application of Rules 110 and 111. To the extent possible, the provisions of Rules 110 and 111 respecting the record and manner of its transmission and filing or return in appeals shall govern upon the issuance of the writ and the parties shall proceed as though the appeal had been commenced by the filing of a notice of appeal, unless otherwise provided by this rule, the court, or by statute. Each reference in Rules 110 and 111 to the trial court, the trial court administrator, and the notice of appeal shall be read, where appropriate, as a reference to the body whose decision is to be reviewed, to the administrator, clerk or secretary thereof, and to the writ of certiorari respectively.

Subd. 2. Transcript of Audiotaped Proceedings. If a proceeding has been audiotaped and a record of the proceeding is necessary for the appeal, the relator shall order the transcript from the agency or body within ten days after the writ of certiorari is filed. The relator shall make appropriate financial arrangements with the agency or body for the transcription. The agency or body shall designate a court reporter or other qualified person to transcribe the audiotape. The agency or body shall serve and file a transcript certificate pursuant to Rule 110.02, subdivision 2(a) within ten days after the transcript is ordered. The reporter shall file the original and first copy of the transcript with the agency or body, deliver a copy to the attorney for each party to the appeal separately represented, and file a certificate of filing and delivery pursuant to Rule 110.02, subdivision 2(b).

Subd. 3. Notice of Contents of Record. Unless the time is extended by order of the court on a showing of good cause, the itemized list of the contents of the record as described in Rule 111.01 shall be served on all parties and filed with the clerk of the appellate courts by the agency or body within 30 days after service of the petition or 14 days after delivery of the transcript in accordance with subdivision 2 of this rule, whichever date is later. Service and filing shall be accomplished by notice of service and filing, as in Form 115C in the appendix to these rules, which shall constitute proof of service.

Subd. 4. Timing of Briefing. Relator shall serve and file a brief and addendum within 30 days after the service of the itemized list of contents of the record by the agency or body, and briefing shall proceed in accordance with Rule 131.01.

Subd. 5. Transmission of Record. The record shall be retained by the agency or body until the clerk of the appellate courts requests that it be transmitted to the court. The record shall thereupon

be transmitted promptly to the clerk of the appellate courts with a copy of the itemized list of the contents, in quadruplicate.

(Amended effective for appeals taken on or after January 1, 1992; amended effective January 1, 1999; amended effective January 1, 2010; amended effective July 1, 2014.)

Advisory Committee Comment - 1998 Amendment

The amendments to this rule in 1998 update references to the Department of Economic Security, clarify that the time for appeal and jurisdictional acts are defined by statute, clarify the terms used to refer to the parties, and establish procedures for transcribing audiotapes of agency proceedings.

Because certiorari in Minnesota is a statutory remedy, the jurisdictional prerequisites for certiorari review are governed by the applicable statute, not by the appellate rules. Statutes governing various types of decisions reviewable by certiorari may establish different time limitations and contain different requirements for securing review by the Court of Appeals. Examples of different statutory requirements include: proceedings governed by the Administrative Procedure Act, Minnesota Statutes 1996, sections 14.63 and 14.64, (service and filing of petition for writ of certiorari not more than 30 days after party receives final decision and order of agency; timely motion for reconsideration extends time until service of order disposing of motion); reemployment benefits proceedings, Minnesota Statutes 1996, section 268.106, subdivision 7, (service and filing of petition for writ of certiorari within 30 days of mailing of Commissioner of Economic Security's decision); and proceedings under the general certiorari statute, Minnesota Statutes 1996, sections 606.01 and 606.02, (issuance of writ and service of issued writ within 60 days after party applying for writ receives due notice of proceedings to be reviewed).

The Rule has been modified to make clear that the applicable statutes will determine the time limitations and triggering events for review.

The rule has been modified to clarify the procedure for obtaining a stay of the order for which review is sought. As with other appellate proceedings, requests for stays should be addressed in the first instance to the agency or body which has issued the challenged decision.

A party seeking certiorari review is a petitioner unless and until the court issues a writ of certiorari. After a writ has been issued, the party seeking review is called the relator. The adverse party or parties and the agency or body whose decision is to be reviewed are the respondents.

Finally, the revisions clarify and make more specific the procedures for preparation and submission of the record for appellate review.

Advisory Committee Comment - 2009 Amendments

Rule 115.04 is amended to change the timing rules for certiorari proceedings. Subdivision 3 establishes a new Form 115C to ensure that the itemized list is provided to all parties and to determine the date and means of service and filing. One of the purposes of this amendment is to defer briefing until the contents of the record are known to the parties. Subdivision 4 establishes the timing requirements for briefing.

Subdivision 5 clarifies that the record itself is then to be retained by the agency or body until needed by the appellate court. This provision does not directly affect the litigants - it is primarily a matter of administration of the appellate court clerk's office. The rule requires that the record be accompanied by the itemized list of the contents in quadruplicate because that form is used to document receipt by the appellate courts and again to document receipt when the record is returned to the agency or body.

115.05 Costs and Disbursements

Costs and disbursements may be taxed by the prevailing party but not for or against the body to whom the writ is directed. If a writ appears to have been brought for the purpose of delay or vexation, the Court of Appeals may award double costs to the prevailing party.

115.06 Dismissal Costs

If any writ of certiorari is issued improperly or is not served as required by these rules, the party against whom it is issued may have it discharged on motion and affidavit showing the facts and shall be entitled to allowable costs.

See **Appendix** for form of the petition for a writ of certiorari (**Form 115A**) and of the writ of certiorari (**Form 115B**).

Comment - 1983

Rule 115 sets out the procedure for securing review by the Court of Appeals of decisions of the Commissioner of Jobs and Training, decisions appealable pursuant to the Administrative Procedure Act, and other decisions reviewable by certiorari to the Court of Appeals. The procedures are similar to those provided by former Rule 115 except that the time limitations set out in the rule have been shortened to conform with the time limitations presently provided in the statute governing review of unemployment compensation decisions. The rule cautions that statutes governing review of the various types of decisions reviewable by certiorari may establish different time limitations.

Proof of service of the petition and the writ must be filed with the clerk of the appellate courts within five days after service. A copy of the petition and the writ must be provided to the attorney general whenever the state or a department or agency of the state is a party or the body to whom the writ is directed.

A completed statement of the case shall be attached to the petition (Form 133).

See appendix for form of the petition for a writ of certiorari (Form 115A) and of the writ of certiorari (Form 115B).

NOTE: For procedure to be followed for the filing of a petition for declaratory judgment to determine the validity of an administrative rule pursuant to Minnesota Statutes, section 14.44, see Rule 10 of the Special Rules of Practice for the Minnesota Court of Appeals.